

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.  (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING WAIVER OF RULE 51.2  
AND SETTING EVIDENTIARY HEARINGS**

On April 22, 2004, Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and The Utility Reform Network (TURN)<sup>1</sup> filed a motion requesting waiver of Rule 51.2 of the Commission's Rules of Practice and Procedure, and requesting that the Commission adopt the proposed settlement agreement attached to the motion. The request for waiver of Rule 51.2 is granted.

San Diego Gas & Electric Company (SDG&E) opposes the motion of the Settling Parties, and argues that the Commission should reject the proposed

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<sup>1</sup> Collectively referred to as the "Settling Parties."

settlement agreement, hold evidentiary hearings on the proposed settlement agreement, and deny the request for waiver of Rule 51.2. The request for evidentiary hearings is granted in part.

### **Rule 51.2**

Rule 51.2 states: “Parties to a Commission proceeding may propose a stipulation or settlement for adoption by the Commission (1) any time after the first prehearing conference and (2) within 30 days after the last day of hearing.” In this proceeding, the settlement was proposed more than 30 days after the last day of hearing. Given that the California Department of Water Resources (DWR) submitted a supplemental revenue requirement determination for 2004 in this docket on April 22, 2004,<sup>2</sup> to this Commission, allowing for a late submission of the proposed settlement agreement is not prejudicial to the resolution of this proceeding. Accordingly, the request for waiver of Rule 51.2 is granted.

### **Evidentiary Hearings**

The Settling Parties argue that evidentiary hearings are not necessary prior to Commission adoption of the Settlement Agreement. (Motion, pp. 18-19.) According to the Settling Parties, the Settlement Agreement is “within the four corners of the proposals and evidence presented” in this proceeding, and parties have already had opportunities to present testimony, conduct cross-examination, and file briefs. (Id.)

SDG&E strongly disagrees with the Settling Parties, and argues that the allocation methodology contained in the proposed settlement was not previously presented. (SDG&E Opening Comments, pp. 25-26.) SDG&E asserts that it

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<sup>2</sup> See Letter Memorandum of DWR dated May 17, 2004.

should be allowed to conduct discovery, and present evidence and testimony in support of the claims of “the rate increases and customer impacts” it raised in its Comments, and that the Commission should provide for “full” evidentiary hearings and a “full” briefing schedule. (Id.)

Because the Settlement Agreement does in fact appear to be a compromise of the litigation position presented by PG&E and SCE, the Settling Parties have a valid argument that the contents of the Settlement Agreement are within the scope of the record this proceeding. Nevertheless, even though the allocation methodology contained in the Settlement Agreement consists of components that were previously in the record, the allocation methodology as proposed in the Settlement Agreement is in fact new. Accordingly, it is reasonable to allow SDG&E to cross-examine the Settling Parties on the proposed Settlement Agreement. This will provide SDG&E an opportunity to present record evidence on the impacts of the Settlement Agreement.

Even though SDG&E has already submitted detailed comments on the Settlement Agreement, SDG&E also seeks to present additional direct testimony and evidence regarding the potential impacts of the Settlement Agreement. This appears to be unnecessary, particularly given the Settling Parties well-founded argument that the Settlement Agreement is based upon the existing evidentiary record.

SDG&E’s request for evidentiary hearings is granted. The Settling Parties shall present witnesses in support of the Proposed Settlement for cross-examination. SDG&E’s request to be allowed to submit additional testimony and evidence is denied. Parties will be allowed to submit briefs on the issue of the Settlement Agreement after the evidentiary hearings. Briefs should be served

electronically no later than 2:00 p.m. on the applicable date; filing may be at anytime before 5:00 p.m. on the applicable date.

**IT IS RULED** that:

1. The Motion of the Settling Parties for waiver of Rule 51.2 is granted.
2. Evidentiary hearings on the Settlement Agreement are to be held at the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California, on June 14, 2004, beginning at 10:30 a.m., and continuing to June 15, 2004 if necessary.
3. Proponents of the Settlement Agreement shall present witnesses for cross-examination at the evidentiary hearings.
4. Opening Briefs on the proposed Settlement Agreement are due on June 25, 2004.
5. Reply Briefs on the proposed Settlement Agreement are due on July 2, 2004.
6. All service of documents in this phase of this proceeding is electronic, as previously ruled.

Dated May 27, 2004, at San Francisco, California.

/s/ PETER V. ALLEN  
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Peter V. Allen  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Waiver of Rule 51.2 and Setting Evidentiary Hearings on all parties of record in this proceeding or their attorneys of record.

Dated May 27, 2004, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

A.00-11-038, et al. PVA/tcg